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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION,

No. 07-cv-5944-SC
MDL No. 1917

This Document Relates to:

*Electrograph Systems, Inc. et al. v.
Technicolor SA, et al., No. 13-cv-05724;*

*Alfred H. Siegel, as Trustee of the Circuit
City Stores, Inc. Liquidating Trust v.
Technicolor SA, et al., No. 13-cv-05261;*

*Best Buy Co., Inc., et al. v. Technicolor SA,
et al., No. 13-cv-05264;*

*Interbond Corporation of America v.
Technicolor SA, et al., No. 13-cv-05727;*

Office Depot, Inc. v. Technicolor SA, et al.,

**THOMSON DEFENDANTS'
OPPOSITION TO DIRECT ACTION
PLAINTIFFS' MOTION TO ISSUE A
LETTER OF REQUEST FOR
INTERNATIONAL JUDICIAL
ASSISTANCE TO TAKE DEPOSITIONS
IN FRANCE**

Judge: Hon. Samuel Conti

1 *No. 13-cv-05726;*

2 *Costco Wholesale Corporation v.*
3 *Technicolor SA, et al., No. 13-cv-05723;*

4 *P.C. Richard & Son Long Island*
5 *Corporation, et al. v. Technicolor SA, et al.,*
6 *No. 31:cv-05725;*

7 *Schultze Agency Services, LLC, o/b/o*
8 *Tweeter Opco, LLC, et al. v. Technicolor SA,*
9 *Ltd., et al., No. 13-cv-05668;*

10 *Sears, Roebuck and Co. and Kmart Corp. v.*
11 *Technicolor SA, No. 3:13-cv-05262;*

12 *Target Corp. v. Technicolor SA, et al., No.*
13 *13-cv-05686*

14 *Tech Data Corp., et al. v. Hitachi, Ltd., et*
15 *al., No. 13-cv-00157*

16 *Dell Inc. v. Hitachi Ltd.,*
17 *No. 13-cv-02171;*

18 *Sharp Electronics Corp., et al. v. Hitachi,*
19 *Ltd., et. al., No. 13-cv-01173*

20 *ViewSonic Corporation v. Chunghwa Corp.,*
21 *et al., No. 14-cv-02510*

1 The DAPs move for the issuance of a letter of request to obtain testimony from four
 2 former Thomson SA employees in France—Emeric Charamel, Christian Lissorgues, Didier Trutt,
 3 and Agnes Martin. (Mot. at 2.) Thomson SA and Thomson Consumer Electronics (“Thomson
 4 Defendants”) do not dispute that proceeding under the Hague Convention (“Hague”) is the
 5 appropriate means by which to obtain testimony from the four French witnesses. But the
 6 Thomson Defendants object to DAPs’ delay in seeking to institute Hague procedures for
 7 witnesses DAPs have long known about. Allowing DAPs to wait until the eleventh hour to begin
 8 the months-long process of obtaining depositions under the Hague for witnesses they have known
 9 about since last year (at the latest) would prejudice Thomson Defendants and jeopardize the
 10 March 9, 2015 trial date. The DAPs’ Motion should be denied.

11 **FACTUAL BACKGROUND**

12 As explained more thoroughly in the Thomson Defendants’ Response to DAPs’
 13 Administrative Motion to Extend Discovery Deadline, filed concurrently herewith, the DAPs
 14 have long known of Charamel, Lissorgues, Trutt, and Martin.¹ On October 17, 2011 Samsung
 15 SDI filed supplemental responses to the Direct Purchaser Plaintiffs’ (“DPPs”) First Set of
 16 Interrogatories which identified [REDACTED]

17 [REDACTED]
 18 [REDACTED] (See Ex. A at 31-33, 45-46, 52, 53, 56, 58, 60-65.) A year and a half later, in March
 19 2013 Sharp filed its complaint and the other DAPs moved to amend their complaints to add
 20 claims against the Thomson Defendants (“Thomson”). On August 7, 2013, after Thomson SA
 21 moved to dismiss Sharp’s claims for lack of personal jurisdiction, Sharp filed its opposition brief
 22 and attached over 300 pages of exhibits, including Samsung SDI’s October 17, 2011
 23 Interrogatory Responses, and numerous other documents previously produced by other
 24 defendants that specifically identify [REDACTED] (See e.g. Dkt. 1835, Exs.
 25 B, C, E, F, H, L.) As such, it is undisputed that the DAPs knew of the potential relevance of these
 26

27 ¹ Thomson Defendants dispute the relevance of Thomson Defendants’ activities in Europe, as they are
 28 unrelated to the DAPs’ claims brought in the United States.

1 individuals no later than August 2013. *Id.*

2 Further, on October 28, 2013, Sharp filed its First Amended Complaint, specifically
3 identifying [REDACTED]

4 [REDACTED]
5 [REDACTED] (See Sharp's FAC [Dkt. 2030-4] at ¶¶ 196, 198.)²

6 The DAPs also have known for several months that they must initiate Hague proceedings
7 to obtain deposition testimony from the four French witnesses. On April 11, 2014, Sharp sent a
8 letter to the Thomson Defendants stating that based on information "[DAPs] obtained from other
9 defendants during the discovery process," the DAPs wanted to notice the deposition of, *inter alia*,
10 Charamel and Lissorgues. See Ex. C. On April 18, 2014, the Thomson Defendants responded
11 with an email informing Sharp that both Charamel and Lissorgues were former employees of
12 Thomson SA, effectively notifying the DAPs that Thomson SA could not force these individuals
13 to travel to the United States to sit for a deposition.

14 On April 29, 2014, the Thomson Defendants and the DAPs entered into a stipulation that
15 set the same discovery, dispositive motion, and trial preparation deadlines as those contained in
16 the March 21, 2014 Scheduling Order applicable to the other defendants. [Dkt. 2554.] The
17 parties stipulated that discovery would be completed on September 5, 2014, the deadline to file
18 dispositive motions would be November 7, 2014, and trial would commence on March 9, 2015.
19 *Id.*

20 On May 14, 2014, Thomson SA served responses and objections to the DAPs' document
21 requests, stating that Thomson SA would not produce documents in response to the requests
22 outside of Hague procedures if doing so would "violate the laws of the foreign jurisdiction(s) in
23 which the information and/or documents are located, including, without limitation, the laws of
24 France." See Ex. D. On June 4, 2014, counsel for the Thomson Defendants met and conferred
25 with counsel for Sharp regarding these responses, during which Thomson SA confirmed once

26 ² In November and December 2013, each of the DAPs who have joined the instant administrative
27 motion also filed complaints against the Thomson Defendants that contained virtually identical
28 allegations. (See *e.g.* Electrograph's FAC [Dkt. 2279] at ¶152.)

again that, in accordance with French law, it could not produce documents located in France “unless requests are made under the Hague Convention.” See Ex. E, at 1. Thomson SA also stated: (1) “plaintiffs would be required to go through Hague procedures to acquire” the deposition of Charamel and (2) it had been unable to locate Lissorgues and had no contact information for him. *Id.* at 3. Thus, it is undisputed that the DAPs have known since at least June 4, 2014, that they would need to utilize Hague procedures to obtain testimony from Charamel and Lissorgues.

Although the DAPs alleged last year that Trutt and Martin participated in conspiratorial conduct, the DAPs first indicated they wanted to depose Martin and Trutt on August 8, 2014, only one month before the close of discovery. See Ex. F. At the time the DAPs issued deposition notices for Trutt and Martin, they were well aware that Martin and Trutt were French-based. Therefore, the DAPs should have inquired with the Thomson Defendants long before August 8, 2014 about obtaining Martin’s and Trutt’s depositions and whether Hague procedures were required.

ARGUMENT

A. Legal Standard.

A letter rogatory is a formal written request sent by a court in which an action is pending to a court of a foreign country, requesting the foreign court to compel the testimony or discovery from a witness resident within that court’s jurisdiction. *Asis Internet Services v. Optin Global, Inc.*, 2007 WL 1880368, at *3 (N.D. Cal. June 29, 2007). Federal Rule of Civil Procedure 28(b) stipulates that a deposition may be taken in a foreign country “(2) pursuant to a letter of request (whether or not captioned a letter rogatory).” Fed. R. Civ. P. 28(b); *Asis Internet Services*, 2007 WL 1880368, at *3.

A court is inherently vested with the authority to issue letters rogatory. *S.E.C. v. Leslie*, 2009 WL 688836, at *2 (N.D. Cal. March 16, 2009); see also *United States v. Staples*, 256 F.2d 290, 292 (9th Cir. 1958); *United States v. Reagan*, 453 F.2d 165, 168 (6th Cir. 1971). Whether to issue such a letter is a matter of discretion for the court, and the court can deny issuing the letter upon a showing of good cause. *Asis Internet Services*, 2007 WL 1880368, at *3; see also

1 *Security Ins. Co. of Hartford v. Trustmark Ins. Co.*, 218 F.R.D. 24, 26-27 (D. Conn. 2003.)
 2 “When determining whether to exercise its discretion, a court will generally not weigh the
 3 evidence sought from the discovery request nor will it attempt to predict whether that evidence
 4 will actually be obtained.” *Id.*; see also *DBMS Consultants Ltd. v. Computer Assocs. Int’l, Inc.*,
 5 131 F.R.D. 367, 369 (D. Mass. 1990); *B & L Drilling Elecs. v. Totco*, 87 F.R.D. 543, 545 (W.D.
 6 Okla. 1978). “Ultimately, a court’s decision whether to issue a letter rogatory requires an
 7 application of Rule 28(b) in light of the scope of discovery provided for by Federal Rules of Civil
 8 Procedure.” *Id.* Judicial supervision of discovery should always seek to minimize its costs and
 9 inconvenience and to prevent improper uses of discovery requests. *Leslie*, 2009 WL 688836, at
 10 *3.

11 **B. There is Good Cause to Deny the DAPs’ Motion to Issue a Letter of Request**
 12 **for International Judicial Assistance to Take Depositions in France.**

13 There is good cause for the Court to deny the DAPs’ motion for the issuance of a letter
 14 rogatory. As explained above, the DAPs have long known that Charamel, Lissorgues, Trutt, and
 15 Martin might possess testimony relevant to their claims. And the DAPs have also known for
 16 months of the need to initiate Hague proceedings to depose these witnesses. Nonetheless, the
 17 DAPs waited until approximately one week before the September 5, 2014 discovery deadline to
 18 file the instant motion seeking a letter rogatory to obtain the testimony from each of these foreign
 19 witnesses. Given the DAPs’ lack of diligence, the Court should not issue a letter rogatory, as any
 20 further delay in discovery for the letters rogatory process is not justified. *United States v. Rosen*,
 21 240 F.R.D. 204, 215 (E.D. Va. 2007) (denying issuance of letters rogatory where the delay
 22 attending the use of the letters rogatory process was not justified.)

23 Further, issuing a letter rogatory as requested by the DAPs would result in a change to the
 24 March 21, 2014 Scheduling Order, applicable to the Thomson Defendants as a result of the April
 25 29, 2014 stipulation between Thomson Defendants and the DAPs. [Dkt. 2554.] A scheduling
 26 order “may be modified only for good cause and with the judge’s consent.” Fed. R. Civ. P.
 27 16(b)(4). Because the DAPs were not diligent in seeking the depositions of Charamel,
 28 Lissorgues, Trutt and Martin, good cause does not exist to extend the discovery deadline to obtain

1 the testimony of foreign witnesses under the Hague. *Johnson v. Mammoth Recreations, Inc.*, 975
2 F.2d 604, 609 (9th Cir. 1992).

3 The Court has consistently stated that “maintaining the March 9, 2015 trial date is
4 important to resolving these cases.” [Dkt. #2711]. The additional, belated discovery sought by
5 the DAPs will undoubtedly jeopardize the March 9, 2015 trial date. If efforts to utilize Hague
6 procedures to obtain testimony from other former employees of defendants in this case are any
7 guide, it will take at least several months to secure the testimony of former Thomson SA
8 employees. For example, since at least January 2014, the Plaintiffs have been attempting to
9 utilize Hague procedures to obtain the testimony in the Netherlands of former Philips and LPD
10 employee Leo Mink, but still have not succeeded in doing so. *See* Ex. F. If the Thomson
11 Defendants are forced to continue with discovery well into December 2014 or later, it will be
12 impossible to file dispositive motions by November 7, 2014, and prepare for the March 9, 2015
13 trial. The DAPs should not be permitted to depose the four French witnesses, given the pending
14 discovery deadline of September 5, 2014 and dispositive motion deadline of November 7, 2014.

15 CONCLUSION

16 Good cause exists to deny the DAPs’ request for a letter rogatory to depose Charamel,
17 Lissorgues, Trutt and Martin. The record establishes that the DAPs had a full opportunity to take
18 discovery within the agreed-upon timeframe. The DAPs’ eleventh hour attempt to institute
19 Hague procedures should not be rewarded, and their motion should be denied in its entirety.

20 Dated: September 2, 2014

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